

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on January 19, 2001 at 8:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. Darrel Adams (R)
Rep. Gilda Clancy (R)
Rep. Aubyn A. Curtiss (R)
Rep. Bill Eggers (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Linda Holden (R)
Rep. Joan Hurdle (D)
Rep. Jeff Mangan (D)
Rep. Brad Newman (D)
Rep. Ken Peterson (R)
Rep. Bill Thomas (R)
Rep. Merlin Wolery (R)
Rep. Cindy Younkin (R)

Members Excused: Rep. Mark Noennig (R)
Rep. Diane Rice (R)

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Mary Lou Schmitz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: **HB 189 - 1-12-01**
HB 238 - 1-12-01
HB 256 - 1-16-01

Executive Action: **HB 191 - DPAA**

Chairman Shockley announced that the **Speaker of the House, Dan McGee**, would like to speak to the Committee. **Mr. Speaker** said he had just become aware of a situation which he feels responsible for, which has to do with fiscal notes and would like to apologize. Some Bills have come through that had no fiscal notes and that has become an issue. When he gets his stack of Bills to assign to a Committee, it's stamped at the top, "fiscal notes may be required". His staff then requests fiscal notes and the problem is this: by the time he assigns it to a Committee, within 24 hours it usually gets down to a Committee such as this, for example, and this Committee may authorize the notification for publication of the papers for public hearing which takes 72 hours. So, in four days' time, from the time he assigns it, the Committee could have the Bill advertised and ready for public hearing. The problem is, the fiscal note takes six days to produce. He said he probably has not handled his end of things properly to where he has notified either the Chairman or the Committee Secretary that a fiscal note may be necessary, therefore, don't schedule until you have your fiscal note. He has already dealt with this at his level.

HEARING ON HB 189

Sponsor: Rep. Bill Eggers, HD 6, Big Horn County said this Bill addresses data collection. There are at present allegations nationwide, including allegations within this state, that individuals in law enforcement agencies are profiling various minority groups in connection with law enforcement activities. These allegations are both real and imagined. The purpose of this legislation is to create a win-win situation between law enforcement and the racial groups that are being profiled. The problem nationwide is that there are either individual or institutional prejudices involved. This data collection eliminates that when it doesn't exist or profiles it in a manner that allows law enforcement agencies to address it, both in training and education.

The reason it is important to the public is, in this state there are Hispanics, Blacks and Indians who feel that they are picked on either by sight identification or by their license plates. This legislation is racially a law enforcement neutral. He would like to take the position that a problem doesn't exist. This will confirm that notion that a problem doesn't exist and if it does, it will allow law enforcement to work on it in their own training practices, etc.

It is not illegal to target a suspected criminal based on their conduct. If a person is doing something suspicious, obviously law enforcement should pay attention to that. **EXHIBIT(juh15a01)**

{Tape : 1; Side : A; Approx. Time Counter : 0 - 8}

{Tape : 1; Side : A; Approx. Time Counter : 8 - 14.1}

Proponents: Pam Bucy, Assistant Attorney General

Sen. Gerald Pease, SD 3, Lodge Grass

Rep. Carol Juneau, HD 85, Browning

Rep. Christine Kaufmann, HD 53, Helena

Andrew Huff, Attorney; Board Member, ACLU; Helena

EXHIBIT (juh15a02)

{Tape : 1; Side : A; Approx. Time Counter : 14.1 - 29.7}

Daniel Casey, Montana Human Rights Network, Helena

Rep. Frank Smith, HD 98, Poplar

Rep. Norma Bixby, HD 5, Lame Deer

Rep. Joan Hurdle, HD 13, Billings

{Tape : 1; Side : B; Approx. Time Counter : 0.1 - 9.8}

Shawn Whitewolf, Northern Cheyenne

Opponents: Troy McGee, Montana Association Chiefs of Police, Helena.

Ken Dove, Sergeant, Billings Police Department, agreed with the above witness that more staff would be needed but the department wouldn't have the funding. If a funding source could be available, he would be in favor of the Bill.

Informational Witness: Rep. Ken Peterson, HD 20 related a personal situation concerning his adopted son, Kirk Peterson. He is three-quarter American Indian, mostly Crow and partly Blackfeet. He has been discriminated against in Billings because he is Indian.

Col. Bert Obert, Montana Highway Patrol and the Department of Justice said the concept is something he agrees with and the Patrol agrees with. He is pleased Rep. Eggers brought the Bill forward. It is disappointing they have come to this juncture in law enforcement but the sad fact is that there are other states that have caused part of this transition and

they need to address it before it does become a problem. He would like to see some amendments to allow the majority of the information but with some minor changes and not a lot of additional employees.

Chairman Shockley said **Rep. Peterson** and **Col. Obert** should be listed as Proponents.

{Tape : 1; Side : B; Approx. Time Counter : 8.7 - 29.7}

Questions from Committee Members and Responses: **Reps. Newman, Laszloffy, Mangan, Hurdle, Gutsche** to **Col. Obert**, **Rep. Eggers** and **Sergeant Ken Dove** and **Andrew Huff** for clarification.

{Tape : 2; Side : A; Approx. Time Counter : 0.1 - 29}

Closing by Sponsor: **Rep. Eggers** closed the Hearing on HB 189 saying a consensus was reached here and it serves a good purpose. He heard, through testimony, that it was going to be over burdensome to law enforcement but he rejects that proposition and suggests the following: 1) We are in a computer age and a number of things can happen. **Col. Obert** did share a point with him that a new format for the highway patrol ticket which would have various boxes to check off. A check off list won't take very long and if done with a proper pencil, and the police department buys a scanner, then that ticket can be run through the scanner fast and the information can then go to the Board of Crime Control and the job is done. 2) Eventually there will be computers in police cars. He thinks that is doable.

He would also like to extend the effective date to give all law enforcement a chance to revise their tickets.

There is another dynamic out there that needs to be addressed. One lawsuit by a competent plaintiff's attorney for the ACLU will cost every single local government more than this process, ten times over. He is attempting to eliminate the potential for lawsuits down the line.

HEARING ON HB 238

Sponsor: **Rep. Bill Thomas, HD 93, Central Montana** said this Bill is a victim's rights Bill. It was precipitated by a potentially tragic incident that occurred.

It takes it from the discretionary to the statute state.

Proponents: **Mark Robbins, father of a victim** who was shot at by another youth. The gun was a high powered rifle and the bullet was deflected so **Mr. Robbins'** son was not hurt. It was a serious

offense and the same evening, the youth held the gun against another teenager's head. He was charged with three felony offenses and placed in a youth detention facility. **Mr. Robbins** had complete faith in the system but within six hours of arrest, the youth was back on the streets. He was placed under probation but the Juvenile Probation Officer who gathered the facts before the Hearing did not get all the facts. He was allowed to go back to school with the same teenagers he had just assaulted.

Mr. Robbins feels the victim has the right to have his side of the story heard and that is the only way justice can be done. His son went through several months of fear because the student was released before he was finally placed in a youth facility.

Mr. Robbins feels the parents should have been notified before the youth was released and they would have known all the facts were gathered and the courts had a true picture of what happened. All the information was there the night of the accident but it was not put together in a complete picture. If victims had to be notified before the juvenile was released they would have knowledge that all the information was being used.

John Parker, a Victim's Advocate, representing the Fergus County Attorney's office said our system of justice did let the **Robbin's** family down. **Simple notification, information and consultation** are very important, necessary and just basic.

Informational Witness: Sandy Oitzinger, Executive Director, Montana Juvenile Probation Officers' Association said there is a 24-hour requirement on the adjudicatory hearings for which the notification would apply. There is some concern about being able to notify the witnesses in all cases. If the designee, and this would probably vary across the state, of the County Attorney does not have the address in the police report or if the victim for some reason has left town, it might be difficult to get that notification done. She didn't know what the ramifications of being out of compliance with the statute would be in that case. This would be a very positive change but there needs to be just a little bit of room in the statute so that when all good faith efforts are being made to comply, but is just not possible, that jurisdiction can be found out of compliance.

Questions from Committee Members and Responses: Reps. Newman, Hurdle, Laszloffy, Mangan, Clark to Rep. Thomas, Mr. Parker and Ms. Oitzinger for clarification.

{Tape : 2; Side : B; Approx. Time Counter : 0.1 - 26.7}

Closing by Sponsor: Rep. Thomas closed the Hearing on HB 238 by saying, what this proposed legislation does is to bring felony offenses against juveniles into the same realm of statute as adults. A small community is so much different than a municipality like Billings, Great Falls, Helena or Missoula. This just added to the immensity of the situation.

HEARING ON HB 256

Sponsor: Rep. Cindy Younkin, HD 28, Southeastern Gallatin County, Bozeman said this Bill is an issue of fairness regarding careless or reckless driving citations. Currently, the maximum penalty for careless or reckless driving, disregarding the severity of an accident, and revoking their permit, is \$100 if the offender has not been convicted of the same offense within a year. Therefore, an offender could have a string of careless or reckless driving citations a year and a day apart and one of those could have resulted in a crash where there was serious bodily injury or perhaps a fatality and the most, under 61-8-711, would be a \$100 fine. If the offender is not DUI and simply doesn't pay attention to how they are driving, the offender could only be fined \$100. This Bill would give the discretion to the Court to elevate that to a felony and fine a person up to \$10,000 and a term not exceeding 5 years or both.

Proponents: Sherri and George Hoffman, Belgrade **EXHIBIT**(juh15a03)

George Watson, Clinical Psychologist, Bozeman

John Connor, Attorney General's Office, appearing on behalf of the Montana County Attorney's Association, said they support this Bill for the same basic reasons they brought the other Bill that is to increase the penalty for negligent vehicular assault when serious bodily injury is involved, which this Committee approved 20-0. The reason why he thinks that these offenses ought to have increased penalties is that the penalty is then an act specific. Rather than charging a generic offense, like criminal endangerment which has a maximum penalty of up to ten years for any and all driving offenses, this Bill would allow a driver's record, that causes serious injury, to reflect the fact that he or she has violated this reckless or careless driving statute and in the process, caused serious bodily injury. It allows a broader period of time in which people can seek to obtain restitution through the criminal justice system.

Opponents: None

Questions from Committee Members and Responses: Rep. Newman asked Mr. Connor if it would be his opinion, as an experienced prosecutor, to add the term "bodily" between words "serious" and "injury" as they appear in the Bill so it will be consistent with the actual definition in the Montana Code? Mr. Connor said he thought that would be a good move. "Serious bodily injury" is defined in the criminal code but he tried to find a definition of "serious injury" in both Title 61 and in the Criminal Code, Title 45 and he couldn't find such a definition but 45-1-102 defines "serious bodily injury" so he thinks it would be good public policy to have that definition in there. It would make it easier to prosecute the case and to give to the jury, if it were to go to trial, an understanding of the code.

Rep. Newman asked Mr. Connor if it would also be his opinion that we need to address the possible mental state required in the statutes, given the proposed penalties? Mr. Connor said he thinks they do have to address that. Title 45, the Criminal Code, acknowledges three defined mental states: purposely, knowingly and negligently. These statutes appear in Title 61. It doesn't define mental states. Careless driving doesn't have a mental state but reckless driving arguably does.

Rep. Newman asked Rep. Younkin if the two matters discussed above with Mr. Connor, in any way change her intent in bringing this legislation? Rep. Younkin said definitely not and she would support those amendments.

Reps. Adams, Harris, Shockley, Laszloffy, Peterson, Clark, Gutsche to Rep. Younkin and Mr. Connor for clarification and perspectives of the Bill.

{Tape : 3; Side : A; Approx. Time Counter : 0.1 - 28.5}

Closing by Sponsor: Rep. Younkin closed the Hearing on HB 256 by touching on the problem of proving the mental state and the problem with proving negligence. She trusts the District Court Judges and the County Attorneys to make the right decisions for the circumstances.

EXECUTIVE ACTION ON HB 168

Motion: REP. NEWMAN moved that HB 168 DO PASS. #1

Discussion: Rep. Newman said the reason he moved a Do Pass on HB 168 is because he believes Rep. Wanzenried's Bill gives them a tool to accomplish a meaningful, comprehensive review of

executive reorganization and he knows that on a state-wide level and in many of the local campaigns the issues of meaningful tax reduction and government reform were critical to those campaigns. This Bill will allow the voters to express to the Legislature their intent as to whether or not they should reduce the size of executive government and then take pro-active steps to put that change into effect.

Discussion: Reps. Peterson, Mangan, Clark, Curtiss, Eggers, Adams, Hurdle, Clancy, Laszloffy, Yunkin, Harris, Gutsche, Thomas offered their support and opposing ideas to the Bill.

{Tape : 3; Side : B; Approx. Time Counter : 0.1 - 29}

Vote: Motion #1 failed on a tie vote 10-10.

Motion/Vote: REP. YOUNKIN moved that HB 168 BE TABLED. #2 Motion carried 10-8 with Reps. Clark, Eggers, Gallus, Gutsche, Harris, Hurdle, Mangan and Newman voting no.

EXECUTIVE ACTION ON HB 171

Motion/Vote: REP. GUTSCHE moved HB 171 be postponed. #3 Motion carried 17-1 with Rep. Shockley voting no.

EXECUTIVE ACTION ON HB 169- HB 170

Motion/Vote: REP. THOMAS moved HB 169-HB 170 be postponed. #4 Motion failed 1-17 with Rep. Thomas voting aye.

Motion: REP. YOUNKIN moved that HB 169 DO PASS. #5

Motion/Vote: REP. EGGERS moved that HB 169 BE TABLED. #6 Motion carried 10-8 with Reps. Shockley, Laszloffy, Adams, Clancy, Gutsche, Hurdle, Peterson and Wolery voting no.

Motion: REP. THOMAS moved that HB 170 DO PASS. #7

Motion/Vote: REP. MANGAN moved that HB 170 BE TABLED. #8 Motion carried 13-5 with Reps. Shockley, Gallus, Gutsche, Hurdle and Peterson voting no.

EXECUTIVE ACTION ON HB 64

Motion: REP. PETERSON moved that HB 64 DO PASS. #9

Discussion: Reps. Mangan, Gallus, Eggers.

{Tape : 4; Side : A; Approx. Time Counter : 0.1 - 29.3}

Discussion: Dwight Krohne **EXHIBIT**(juh15a04)

Motion/Vote: REP. EGGERS moved HB 64 be postponed. #10

Motion carried 12-5 with Reps. Adams, Gallus, Hurdle, Mangan and Peterson voting no.

John MacMaster, in response to a question from Rep. Gutsche, explained how to get a grey bill. The Legislative Services Division Management has had a rule for many sessions that we are not supposed to do grey bills. There are reasons for grey bills and reasons for not having grey bills. The purpose of the rule is the Management believes that the reasons for not having grey bills far outweigh the reasons for having them. That said, along with passing out the amendments, which were prepared by Mr. Woodgerd, an attorney for the Department of Revenue, also passed out what is a grey bill **EXHIBIT**(juh15a05) **EXHIBIT**(juh15a06).

Chairman Shockley announced HB 64 would be postponed until Monday.

EXECUTIVE ACTION ON HB 191

Motion: REP. GALLUS moved that HB 191 DO PASS. #11

Discussion: Reps. Mangan, Newman, Gallus.

Motion/Vote: REP. HARRIS moved that HB 191 BE AMENDED to strike lines 17 and 18, page 3, and the corresponding language in the Title. #12. Motion carried 16-2 with Reps. Clark and Peterson voting no.

Motion/Vote: REP. WOLERY moved that HB 191 BE AMENDED. **EXHIBIT**(juh15a07)

Motion carried 14-4 with Reps. Clark, Curtiss, Peterson and Thomas voting no.

Motion: REP. GALLUS moved that HB 191 DO PASS AS AMENDED. #13

Discussion: Reps. Clark, Gallus, Laszloffy; Curtiss to Brenda Nordlund; Mangan, Peterson, Thomas.

{Tape : 4; Side : B; Approx. Time Counter : 0.1 - 27.6}

EXECUTIVE ACTION ON HB 216

Motion: REP. CLARK moved that HB 216 DO PASS. #14

Discussion: Rep. Clancy

Motion/Vote: REP. HURDLE moved that HB 216 BE TABLED. #15 Motion failed 3-14.

Discussion: Reps. Gallus, Newman

Motion: REP. GALLUS moved that HB 216 BE AMENDED, Page 4, line 12, for first offense shall be fined in an amount not less than \$250 in order to perform community service if a program is available. The amendment will strike "less than" and to insert the language "to exceed". #16

Discussion: John MacMaster said for a point of information, he wants the Committee to understand that in all four places, it is a fine of not less than (and a specified amount). In none of those places is a maximum set. That is a crucial problem with the Bill. A maximum is infinite and that is a problem. He is addressing the Bill as written so the problem should be addressed in an amendment.

Further Discussion: Reps. Mangan, Clark.

Vote: Amendment Motion #16 carried 16-1 with Rep. Thomas voting no.

Motion: REP. CLARK moved that HB 216 BE Conceptually AMENDED to reverse the fines so that they match the infractions. #17

Discussion: John MacMaster, Rep. Clark, Gutsche,

Motion: REP. GUTSCHE moved a substitute amendment to make fines the same. #18

Discussion: Rep. Laszloffy, Gutsche, Newman, Peterson, Mangan, Thomas.

{Tape : 5; Side : A; Approx. Time Counter : 0.1 - 28}

Vote: Motion #18 carried 9-8 with Reps. Laszloffy, Adams, Curtiss, Harris, Newman, Peterson, Thomas and Wolery voted no.

Motion/Vote: REP. GALLUS moved that HB 216 DO PASS AS AMENDED. #19. Motion failed 7-11 with Reps. Shockley, Clark, Clancy, Eggers, Gutsche, Holden, Hurdle, Mangan, Newman, Thomas and Wolery voted no.

ADJOURNMENT

Adjournment: 12:40 P.M.

REP. JIM SHOCKLEY, Chairman

MARY LOU SCHMITZ, Secretary

JS/MS

EXHIBIT (juh15aad)